

**General Assembly**

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Seventy-second session
Item 87 of the preliminary list*
Effects of armed conflicts on treaties

Effects of armed conflicts on treaties**Comments and information received from Governments****Report of the Secretary-General****I. Introduction**

1. The International Law Commission adopted the draft articles on the effects of armed conflicts on treaties at its sixty-third session, in 2011 (see A/66/10, para. 94). In its resolution 66/99, the General Assembly took note of the draft articles as adopted by the Commission, the text of which was annexed to the resolution, and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. The Assembly decided to include in the provisional agenda of its sixty-ninth session the item entitled "Effects of armed conflicts on treaties" with a view to examining, inter alia, the question of the form that might be given to the articles.

2. In its resolution 69/125, the General Assembly recalled its resolution 66/99 and that the International Law Commission decided to recommend to the Assembly that it take note of the draft articles on the effects of armed conflicts on treaties in a resolution and annex them to that resolution, and that it consider, at a later stage, the elaboration of a convention on the basis of the draft articles. The Assembly emphasized the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations, and noted that the subject of the effects of armed conflicts on treaties was of major importance in the relations of States. The Assembly commended once again the articles on the effects of armed conflicts on treaties to the attention of Governments without prejudice to the question of their future adoption or other appropriate action, and decided to include in the provisional agenda of its seventy-second session the item entitled "Effects of armed conflicts on treaties" with a view to examining, inter alia, the question of the form that might be given to the articles.

3. In the same resolution, the General Assembly requested the Secretary-General to invite Governments to submit written comments on any future action regarding

* A/72/50.



the articles. By a note verbale dated 21 January 2015, the Secretary-General invited Governments to submit those comments no later than 1 June 2017. He reiterated that invitation by a note verbale dated 12 January 2016.

4. As at 16 June 2017, the Secretary-General had received written comments from the following States: Australia, Austria and El Salvador. Those comments are reproduced below.

II. Comments on any future action regarding the articles on the effects of armed conflicts on treaties

Australia

[Original: English]
[6 June 2017]

Australia is particularly cognizant that the principles outlined in these draft articles could influence consideration of the relationship between the law of armed conflict and other areas of international law. In this regard, Australia notes the ongoing consideration of the application of human rights law during armed conflict. Australia wishes to ensure that the underlying rationale for the principles articulated in the articles does not set unintended precedents that would have an impact on these other considerations.

Australia notes that these draft articles have been commended to the General Assembly, with consideration to be given regarding whether to elaborate a Convention on this topic. The varied nature and effect of armed conflict is such that the level of consensus required to successfully conclude a binding international instrument on this topic may not be possible. In a non-binding form, the draft articles would remain a useful source of guidance, complementing the existing Vienna Convention on the Law of Treaties, which should continue to be the primary source of law on this topic.

Austria

[Original: English]
[1 June 2017]

Austria would like to state that it still has doubts about the definition of "armed conflict" in article 2 of the draft articles and the inclusion of non-international armed conflicts in the scope of the draft articles. Therefore, Austria proposes to defer the discussion on future action and to further monitor State practice in this regard.

El Salvador

[Original: Spanish]
[31 May 2017]

Taking the safeguard clause established in article 73 of the Vienna Convention on the Law of Treaties as their starting point, the articles constitute a major achievement in terms of codification and progressive development, which will help to fill certain legal gaps that currently exist at the international level.

With regard to the content of these articles, the Republic of El Salvador emphasizes the general principle contained in article 3, which indicates that the existence of an armed conflict does not ipso facto terminate or suspend the

operation of treaties, thereby reaffirming the legal stability and continuity of international obligations.

In this regard, it is important to ensure compliance with certain treaties during armed conflicts, not only those setting out the rules of international humanitarian law, but also those encompassing a wide range of obligations, such as obligations relating to the environment, trade and peaceful methods of dispute resolution, which are also essential for the functioning of States and ensuring the protection of all persons under their jurisdiction.

The Republic of El Salvador therefore believes that it is essential to interpret the content of article 7 in conjunction with the indicative list of treaties to be found in the annex, as only their joint implementation will be able to provide clear rules regarding the continuity of treaties.

With regard to the future form of the articles, El Salvador is not opposed to the adoption of a binding instrument on the subject, but recognizes that it might be useful to establish a working group or other mechanism to address outstanding issues or significant differences that still exist among States.